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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TAVERSHIMA SHANDE, an individual,

Plaintiff,

v.

ZOOX, INC, a Delaware corporation,

Defendant.

Case No. 3:22-cv-05821-BLF

**OPPOSITION OF PLAINTIFF
TAVERSHIMA SHANDE TO
DEFENDANT ZOOX, INC.'S
ADMINISTRATIVE MOTION TO SEAL
EXHIBIT 1 TO SPINELLI-MAMO
DECLARATION**

DATE: May 25, 2023

TIME: 9:00 a.m.

COURTROOM: 3, 5th Floor

JUDGE: Hon. Beth Labson Freeman

The motion of defendant Zook, Inc. ("Zook") seeking to file a generic employee confidentiality and invention assignment agreement under seal is, for lack of a better word, entirely unfounded. The document in question contains no information that could conceivably be considered confidential, which perhaps explains why Zook provides this form agreement to prospective employees without informing them of the agreement's ostensibly confidential nature or otherwise limiting its dissemination.

1 It is unclear why Zoxx is asserting that a plain vanilla form agreement constitutes a valuable
 2 company secret; its basic terms are in widespread use throughout Silicon Valley, and elsewhere around
 3 the country. Their substance, moreover, is described in Zoxx's own (unsealed) public filings in this
 4 case. The instant administrative motion may perhaps be an attempt to pre-cook a separate, highly
 5 disputed issue in the case concerning ownership of widely known information and techniques.
 6 Whatever the objective, Zoxx's motion comes nowhere close to satisfying well-established
 7 requirements with regard to sealing documents in court, and should be emphatically denied.¹

10 DISCUSSION

11 As Zoxx does not deny, judicial records and documents are presumptively open to the public.
 12 *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). To justify filing a
 13 document under seal, a party must present "compelling reasons" to do so. *Id.* Here, Zoxx has utterly
 14 failed to make such a showing.

15 First, its Employee Proprietary Information and Invention Assignment Agreement ("EPIIAA")
 16 contains no confidentiality markings to indicate that the document itself is considered confidential. Nor
 17 does Zoxx inform recipients of the EPIIAA that they should not disseminate it to others. Declaration
 18 of Tavershima Shande in Opposition to Defendant Zoxx, Inc's Administrative Motion to Seal Exhibit
 19 1 to Spinelli-Mamo Declaration ¶¶ 2-3. Nor is the content of the EPIIAA at all unique or unknown in
 20 the high tech industry. *Id.* ¶ 3. Indeed, the document was provided to Mr. Shande prior to the
 21 commencement of his employment with the company. *Id.* ¶ 4.

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 29 ¹ The version of the agreement tendered to the Court by Zoxx is, moreover, incomplete. At or
 30 about the time it was signed, Mr. Shande provided a detailed list of projects for inclusion in Schedule
 31 A; a Zoxx executive told him such a list was unnecessary and apparently discarded it. That list bears
 directly upon Zoxx's claim to have been unaware of Shande's outside video game projects at the time
 he was hired.

1 Second, Zoot has failed to carry its burden to demonstrate a compelling factual basis – or
2 indeed, any basis whatsoever – for asserting that this generic agreement is confidential. No declaration
3 from a company official detailing the steps taken to keep outsiders from seeing this document – or
4 explaining why Zoot’s competitors would benefit from gaining access to a document which all Silicon
5 Valley companies utilize in one form or another – has been provided.
6

7 Instead, the sole evidentiary support presented by Zoot on this motion is a conclusory statement
8 from its outside litigation counsel to the effect that the EPIIAA is both “sensitive and confidential” as
9 well as “critical to Zoot’s ability to remain competitive in the marketplace for talent.” Declaration of
10 Hala Mourad in Support of Defendant Zoot, Inc.’s Motion to Seal ¶ 2. Such a vague, generalized
11 statement about a document’s purported sensitivity does not qualify as a “compelling reason” to seal
12 the records in question. *Philips v. Ford Motor Co.*, 2016 U.S. Dist. LEXIS 176826 *11 (N.D. Cal.
13 2016).
14

15 While genuinely sensitive business information may be sealed under certain circumstances,
16 *Fodera v. Equinox Holdings, Inc.*, 341 F.R.D. 616, 633 (N.D. Cal. 2022), Zoot has failed to show that
17 the EPIIAA fits into that category. Not only is it not treated as confidential by Zoot in its ordinary
18 business dealings (Shande Decl. ¶¶ 2-4), its verbiage has been quoted and described by Zoot in
19 communications with third parties and in non-sealed court filings. *See, e.g.*, Exhibit 2 to Declaration
20 of Vincent Spinella-Mamo in Support of Defendant Zoot, Inc.’s Motion to Dismiss First Amended
21 Complaint and Motion to Strike State Law Tort Claims.
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23 CONCLUSION

24 In a sense, the instant motion is a microcosm of Zoot’s stance on the underlying merits of this
25 case. The company is attempting to claim ownership of video game content which Mr. Shande created
26 on his own time, using his own equipment and utilizing skills he developed during an extensive career
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1 in the video game industry prior to his employment at Zoox. This video game content: (a) does not
2 contain or reflect Zoox trade secrets; (b) does not reveal anything about Zoox's autonomous vehicle
3 software; and (c) would be of no benefit whatsoever to its competitors. Yet as is the case regarding this
4 motion, Zoox seems to believe that generally available source material and techniques belong to it and
5 it alone.
6

7 For all of these reasons, Mr. Shande respectfully requests that Zoox's motion to seal be denied.
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9 Dated: January 24, 2023

CHAUVEL & GLATT, LLP

11 /s/

12 By: _____

Kenneth M. Weinfield

Attorneys for Plaintiff Tavershima Shande
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